

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**FILED**  
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U.S. DISTRICT COURT, E.D.N.Y.

★ SEP 23 2005 ★

**BROOKLYN OFFICE**

**BARBARA SCHWAB et al., individually and  
on behalf of all others similarly situated,**

**Plaintiffs,**

**v.**

**PHILIP MORRIS USA, INC. et al.,**

**Defendants.**

**Civil Action No. CV 04-1945**

**MEMORANDUM AND ORDER  
ON DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
ON PLAINTIFFS' CLAIMS FOR  
EQUITABLE RELIEF**

JACK B. WEINSTEIN, Senior District Judge:

In this civil RICO action for damages based on mail fraud, plaintiffs primarily seek money damages. They also seek equitable relief in the form of (1) disgorgement of profits and (2) an order eliminating the use of "lights" as a descriptor on packaging and in advertisements by defendants for some of their cigarette brands.

Defendants move for partial summary judgment on these claims. As explained more fully at the oral argument on September 12 and 13, 2005, the motion is appropriate.

Disgorgement of profits would duplicate damages—particularly as trebled—based upon claimed overpayments by plaintiffs and would thus be inequitable. Any limitation on the use of the descriptor "lights" is best left to government regulation by the Federal Trade Commission or legislation since the government now substantially controls warnings on cigarette packaging and advertising. *C.f., e.g.,* World Health Organization Framework Convention on Tobacco Control, art. 11(1)(a) (states party to the Convention agree to take measures to ensure that "tobacco product packaging and labeling do not promote a tobacco product by any means that are false,

misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as 'low tar', 'light', 'ultra-light', or 'mild'"). The United States, along with 167 other nations, has signed the Convention, though it has yet to ratify it.

The motion for partial summary judgment dismissing plaintiffs' claims for equitable relief is granted.

SO ORDERED.

/signed/

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Jack B. Weinstein

Dated: September 22, 2005  
Brooklyn, New York